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In The

SUPREME COURT of the UNITED STATES

October Term, 1966

No. 739

HOWARD J. MEISTER,

Petitioner,

v.

STATE OF WISCONSIN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

Post Office Address:
Room 114 East
State Capitol
Madison,
Wisconsin 53702

City-County Building
Madison,
Wisconsin 53703

BRONSON C. LA FOLLETTE
Attorney General of Wisconsin

MICHAEL B. TORPHY, JR.
District Attorney, Dane County

Attorneys for Respondent

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I. JURISDICTION

Respondent opposes the granting of a writ of certiorari on the ground that the facts do not present any substantial federal question.

II. ARGUMENT

A. There Is No Substantial Federal Question of Lack of Due Process By Reason of Alleged Malice of an Assistant Attorney General Who Aided the District Attorney in Grand Jury Proceedings.

The defendant, petitioner in this proceeding, Howard J. Meister, has raised and continues now to raise the question of the propriety of the participation of an assistant attorney general, Leroy Dalton, in the proceedings of the grand jury which indicted him.

The question of his statutory authority to participate either originally or pursuant to a request for assistance from the county District Attorney was decided by the trial court (R. 76-78) and does not appear to be in issue here.

The question now raised is whether alleged "personal malice" by Mr. Dalton, presented by way of offer of proof (R. 123-125), should be a basis for inquiry upon pretrial motions to dismiss and whether such alleged "personal malice" would vitiate entirely the indictment of the petitioner herein.

The affidavit of Mr. Dalton (R. 149-151) directly conflicts with the affidavit of petitioner's counsel (R. 123-125) as to the fact of "personal malice." This affidavit was filed to show on the record that the contentions of malice are contested in total.

The record is replete with showings that Mr. Dalton only assisted the District Attorney; that the Grand Jury was not controlled by the assistant attorney general, Mr. Dalton; and that Mr. Dalton was at no time present during

the Grand Jury deliberations which resulted in the petitioner's indictment.

Assuming as a fact, which the State denies, that there was malice by Mr. Dalton, the petitioner still has not been denied due process. The maximum action of Mr. Dalton was the examination of witnesses to elicit evidence. The Grand Jurors heard this evidence, examined the transcripts, and in private deliberation chose to indict the petitioner.

There is no prejudice shown to the defendant petitioner by any supposed malice of Mr. Dalton. The effect of such prejudice could be shown only by inquiring into the minds of the Grand Jurors as to their reasons for indicting. Such inquiry is universally precluded.

Any "personal malice" must be assumed to diffuse and disappear with the presence of the District Attorney and the private deliberation of the 17-member Grand Jury.

Cases cited by the petitioner are in no way in point. Quotations of petitioner are general statements of due process from cases not even inferentially analogous to the instant case.

The defendant petitioner has been indicted and arraigned. The State must now meet its evidentiary burden before a petit jury. The alleged malice of an assistant attorney general can and will play no part in that evidence or in this petit jury's consideration of it.

No prejudice has been shown to the defendant by any action of Mr. Dalton. With or without any malice of Mr. Dalton, the petitioner has in no way been denied due process.

B. SUFFICIENCY OF THE INDICTMENT PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

The true bill (indictment) is, in fact, sufficient in setting forth the facts constituting the crime charged and to confer jurisdiction upon the Court.

Referring to Section 955.14, Wisconsin Statutes (respondent's appendix, page 1) and to Section 939.05, Wisconsin Statutes (petitioner's appendix, page 4), and Section 946.10, Wisconsin Statutes (petitioner's appendix, page 5) the indictment does state in clear and concise language a crime in violation of the Wisconsin Statutes.

The indictment contains the name of the Court—"Circuit Court, Dane County, Wisconsin."

The indictment states the title of the action—"State of Wisconsin v. Howard Meister."

The indictment names the defendant "Howard Meister" and further identifies the defendant as President of the West Side Bank of Milwaukee.

The indictment specifically cites the statutory section with which the defendant is charged—"Section 946.10 Wisconsin Statutes".

The indictment includes the recitation "against the peace and dignity of the State of Wisconsin".

The consummated crime of bribery is factually set forth in the indictment and the facts of the defendant's participation as an actor in said crime are set forth in the indictment.

The indictment states, "On or about the 29th day of June, 1965, in the city of Madison, Dane County, Wisconsin, and in the State Capitol Building." That is the time and that is the place. Two things happened. Howard Meister, then and there (1) "did direct Dorothy Effinger," and then to the last line of that indictment, (2) "and that the said Dorothy Effinger, pursuant to said direction by Howard Meister did make such offer." Both of these things occurred at that time; both of these things occurred at that place, thus properly alleging venue.

The indictment charges that the defendant directed his employee to make an offer of money to one Earl Elfers "then and there a public officer."

The indictment further alleges that this was money that Earl Elfers "was not then and there authorized to receive."

The usage of the words "then and there" further elucidate the time and place of both happenings (i.e., the direction and the offer).

The facts as alleged bring the defendant squarely within the definition of Section 939.05(2)(c) as a party to a crime and as such party subject to charge of the crime as a principal (section 939.05(1)); and as such principal he is charged with a violation of section 946.10.

The wording of the indictment is profusely clear that the time and place that the defendant directed the offer to be made was then (to wit: on or about the 29th day of June, 1965) and there (to wit: State Capitol Building at Madison, Dane County, Wisconsin). It is further clearly alleged that the employee of the defendant acted pursuant

to that direction in making such offer, at that time and place.

The defendant attempts to read vagueness and lack of certainty in the indictment by injecting the crime of Solicitation (Sec. 939.30 Wis. Stats.) into his argument.

Solicitation, an inchoate crime, as other crimes must be specifically charged. It is not. Nowhere in the indictment does a citation of Section 939.30 appear.

The indictment does thereby confer jurisdiction upon the Court, and no substantial federal question is presented.

Respectfully submitted,

Post Office Address:
Room 114 East
State Capitol
Madison,
Wisconsin 53702

BRONSON C. LA FOLLETTE
Attorney General of Wisconsin

City-County Building
Madison,
Wisconsin 53703

MICHAEL B. TORPHY, JR.
District Attorney, Dane County

Attorneys for Respondent

Appendix

Section 955.14 Wisconsin Statutes is as follows:

"955.14 Crimes, how charged; joinder. (1) The crime charged shall be stated in plain, concise language, without unnecessary repetition. Different crimes and different degrees of the same crime may be joined in one information, indictment or complaint.

(2) The information, indictment or complaint shall state the crime or charge in plain, concise language, without unnecessary repetition and shall contain the name of the court in which the action is pending, the name of the action, the name of the defendant or a description sufficient to identify him, and a citation of the statute which he is charged with having violated, and shall conclude with the words 'against the peace and dignity of the state.'

(3) No indictment, information or complaint shall be invalid nor shall the trial, judgment or other proceedings be affected by reason of any defect or imperfection in matters of form which does not tend to the prejudice of the defendant.

(4) The indictment, information or complaint is sufficient after verdict if it describes the crime in the words of the statute, but other words conveying the same meaning may be used."